

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.8210 OF 1997

ORAL ORDER:

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The 2nd respondent herein, Smt. Chennama, filed a Claim Petition before the 1st respondent under the provisions of the Workmen's Compensation Act, 1923 (for short "the Act") claiming compensation for the death of her husband, while on duty, on 23.6.1987. It is claimed that the deceased was employed by the father of the writ petitioner by name Butcha Reddy for excavation of earth forming embankment of Priyadarshini Jural Project, Left Main Canal, undertaken by the 3rd respondent herein. Both the 3rd respondent herein as well as petitioner's father Butcha Reddy filed counters opposing the said claim. However, during the pendency of the proceedings, father of petitioner died on 25.2.1995 and, thereafter, the applicant requested the 1st respondent herein to delete the name of the contractor arrayed as OP-2 from the proceedings, since the principal employer alone is liable under Section 12 and 13 of the Act. Having accepted the same, the 1st respondent had deleted the name of petitioner's father from the array of the respondents and, ultimately, an Award was passed on 23.9.1996 granting a sum of Rs.49,915/- towards compensation together with penalty of Rs.24,957/-. It was made clear in the Award that since the contractor died on 25.2.1995 and he was deleted from the proceedings at the option of the claimant, the principal employer is liable to pay the said amount as provided under Section 12 of the Act. Accordingly, the 2nd respondent herein was directed to pay the compensation awarded. It appears that pursuant to the said Award, the 2nd respondent initiated proceedings to recover the said amount from the petitioner, who is the son of the contractor. A memo dated 21.1.1997 was issued to all the officials concerned to furnish details of

the bills to be paid to petitioner's father so as to enable recovery. Aggrieved by the said action, this writ petition is filed.

It is contended by the learned counsel for the petitioner that having deleted the name of the petitioner's father from the array of the respondents, to which the principal employer had never raised any objection at any point of time, it is not open to the 3rd respondent to take steps for recovery of the amount in question from the contractor. At any rate, since the petitioner is not put on notice, the respondents are not entitled to take any steps against the petitioner for the alleged liability of his deceased father.

Pending this writ petition by virtue of the interim orders granted, all further proceedings have been stayed.

Counter affidavit has been filed on behalf of the 2nd respondent stating that pursuant to the Award passed by the 1st respondent all the Executive Engineers were directed by letter dated 3.3.1997 to recover a sum of Rs.75,321/- from the pending bills of the contractor.

As can be seen, it is not in dispute that though the father of the petitioner had allegedly engaged the deceased-workman, he filed counter denying the allegations and also opposing the claim. As opted by the claimant, his name was deleted from the proceedings, to which the principal employer never raised any objection. Ultimately, Award was passed without taking any steps to bring the legal representatives on record. Thus, there was no notice to the petitioner, who is the son of the contractor. In the circumstances, the action of the 3rd respondent in initiating steps to recover the amount covered by the Award dated 23.9.1996 from the bills payable to the petitioner's father without affording any opportunity to oppose the said proceedings, is arbitrary, illegal and not in conformity with the principles of natural justice. Since, admittedly, the Award passed by the 1st respondent was confined only against the 3rd respondent-principal employer, it is necessary for this Court to go into the correctness of the said Award. However, the only question is whether the 3rd respondent is entitled to

recover from the petitioner who is the son of the contractor.

As expressed above, since the 3rd respondent sought to recover the amount without notice to the petitioner, I deem it appropriate to dispose of the writ petition declaring that the action of the 3rd respondent in initiating steps for recovery of the amount against the writ petitioner without affording him an opportunity to put forth his version as arbitrary.

Accordingly, the writ petition is disposed of leaving it open to the 3rd respondent to take appropriate steps only after affording due opportunity to the petitioner to oppose the proposed recovery proceedings. No costs.

(G. ROHINI).

5th January, 2007.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.8210 OF 1997

5th February, 20007.

Between:

Hanumantha Reddy.

.. Petitioner.

And

The Commissioner for Workmen’s Compensation,
(Assistant Commissioner of Labour), II Circle,
RR District and others.

.. Respondents.